

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation
of the Business Opportunity Fraud Act of the
State of Washington by:

Mark 5, Inc., Robert D. King, Troy A. Whitworth,
their employees and agents,

Respondents.

Order No. S-04-025-04-TO01

SUMMARY ORDER TO CEASE AND DESIST

THE STATE OF WASHINGTON TO:

Mark 5, Inc.
Robert D. King
9808 Town & Country Blvd, #120
Houston, TX 77054-2208

Troy A. Whitworth
10716 Pickfair Dr.
Austin, TX 78750-4012

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, Mark 5, Inc, Robert D. King, and Troy A. Whitworth have each violated the Business Opportunity Fraud Act and that their violations justify the entry of an order of the Securities Administrator under RCW 19.110.150 to cease and desist from such violations. The Securities Administrator finds that delay in ordering the Respondents to cease and desist from such violations would be hazardous to the investors and to the public and that a Summary Order to Cease and Desist should be entered immediately. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

I.

Mark 5, Inc. is a Texas corporation that maintains its principal business address at 908 Town & Country Boulevard, #120, Houston, Texas. Mark 5, Inc. is the seller of distributorships for the sale of jewelry items (the “jewelry opportunity”). Mark 5, Inc. was registered to offer and/or sell its business opportunity in Washington from November 10, 1998 to November 10, 1999. Mark 5, Inc. has not been registered since November 10, 1999.

Robert D. King (King) is the President of Mark 5, Inc. and served in such capacity at all times relating to the offer and sale of Mark 5, Inc. jewelry distributorship business opportunities.

Troy A. Whitworth (Whitworth) is the National Marketing Director for Mark 5, Inc. and served in such capacity at all times relating to the offer and sale of Mark 5, Inc. jewelry distributorship business opportunities.

II.

On March 8, 2000, the Division issued Summary Order to Cease and Desist against Mark 5, Inc. and Robert D. King for violations of the registration and antifraud provisions of the Washington Business Opportunity Fraud Act.

On March 13, 2000, the company was served, by certified mail, the Summary Order to Cease and Desist, a Notice of Opportunity to Defend and Notice of Hearing, and an Application for Hearing.

Respondents failed to reply to the Summary Order and failed to notify the Division within twenty days of service that they wished to make a request and/or application for hearing.

III.

Respondents Mark 5, Inc. and/or Robert D. King placed or caused to be placed an advertisement in the Vancouver Columbian newspaper published in Vancouver, Washington on at least January 31, 2004. A Washington resident responded to the ad by calling the toll-free number contained in the advertisement to obtain further information about a route sales opportunity. The Washington resident

spoke with Whitworth, who identified himself as the National Marketing Director for Mark 5, Inc. and referred the Washington resident to an Internet website: www.mark5inc.com, at which he found a second toll-free number.

The Washington resident called the second toll-free number and spoke to King, who told the Washington resident that the opportunity had a “one-year return policy.” The Washington resident at that time requested and subsequently obtained from Mark 5, Inc. and Robert D. King offering and promotional materials concerning the jewelry opportunity. The materials included a “Wholesale Distributor Training Manual” for Mark 5, Inc. and a sample distributorship agreement.

King told the Washington resident that for the best “package deal” cost \$12,500 and included locating services for 30 display racks. The purchase price included 720 pairs of earrings, 30 display racks, banners, toppers, a training manual, and telephonic training if necessary. King told the Washington resident sales were split 70/30 between the “distributor” and the location owner. King told the Washington resident that he would earn 50% on each sale.

The Washington resident spoke to King again on February 20, 2004. The Washington resident asked King if Mark 5, Inc. was registered to sell its business opportunity in Washington. King told the Washington resident that Mark 5, Inc. was “fully licensed” to sell its jewelry business in Washington.

Respondents Mark 5, Inc, King and Whitworth failed to disclose the existence of the previous administrative order issued by the Division. Respondents failed to provide the Washington resident with a disclosure document containing complete material information regarding the opportunity, including but not limited to a financial statement for the seller.

IV.

Mark 5, Inc. is not currently registered with the Washington Securities Division to offer or sell business opportunities in the state of Washington and was not so registered at the time of the offer of the jewelry distributorship business opportunity to the Vancouver, Washington resident. It is in the public

interest that the offer and/or sale of the above-described jewelry opportunity in violation of the Washington Business Opportunity Fraud Act cease.

An emergency exists in that further sales of the business opportunity described above would be hazardous to investors and the public of this state.

Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

I.

The offer and/or sale of the jewelry opportunity as described in Tentative Findings of Fact I and III constitutes the offer and/or sale of a business opportunity as defined in RCW 19.110.020(1).

II.

The offer and/or sale of the jewelry opportunity as described in Tentative Findings of Fact I through III was made in violation of RCW 19.110.070 and RCW 19.110.120 because Respondents failed to provide a Washington purchaser with a disclosure document containing complete material information regarding the opportunity, including, but not limited to, a financial statement for the seller and disclosure of the previous administrative order from the Division.

III.

The offer and/or sale of the jewelry opportunity as described in Tentative Findings of Fact I through IV was made in violation of RCW 19.110.050(1) because no business opportunity registration had been made nor a permit issued to Respondents for the offer and/or sale of the business opportunity in this state at the time of the offer or sale to the Washington resident.

The Securities Administrator finds that this action is necessary and appropriate in the public interest and for the protection of investors and that the public safety and welfare require emergency action.

SUMMARY ORDER

Based on the premises of the foregoing,

IT IS THEREFORE HEREBY SUMMARILY ORDERED That Mark 5, Inc., Robert D. King, Troy A. Whitworth, their employees and agents, each cease and desist from violations of RCW 19.110.070 and RCW 19.110.120, the disclosure document and antifraud provisions of the Business Opportunity Fraud Act, respectively.

IT IS THEREFORE HEREBY SUMMARILY ORDERED That Mark 5, Inc., Robert D. King, Troy D. Whitworth, their employees and agents, each cease and desist from violations of RCW 19.110.050(1), the registration requirement provision of the Business Opportunity Fraud Act.

AUTHORITY AND PROCEDURE

This Summary Order is entered pursuant to the provisions of RCW 19.110.150 and chapter 34.05 RCW. The Respondents may each make a written request for hearing as set forth in the Notice of Opportunity to Defend and Opportunity for Hearing accompanying this order. A request for a hearing should be in writing and sent to Deborah R. Bortner, Securities Administrator, Department of Financial Institutions, P.O. Box 9033, Olympia, Washington 98507-9033, to the attention of Martin Cordell. If a respondent does not request a hearing as set forth in the Notice of Opportunity to Defend and Opportunity for Hearing, the Securities Administrator intends to adopt the Tentative Findings of Fact and Conclusions of Law as final and make this Summary Order to Cease and Desist permanent as to that respondent.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Dated this 30th day of March 2004.



Deborah R. Bortner
Securities Administrator

Approved by: *Michael E. Stevenson*
Michael E. Stevenson
Chief of Enforcement

Presented by: *Martin Cordell*
MARTIN CORDELL
Financial Legal Examiner